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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/090,039 | 02/27/2002 | Henry K. Hui | JOHNA.056DV2 | 6923 |

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EXAMINER

COE, SUSAN D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1651

DATE MAILED: 05/21/2002

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,039

Applicant(s)

HUI ET AL.

Examiner

Susan Coe

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-26 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 21-26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____.

DETAILED ACTION

1. The preliminary amendment filed February 27, 2002 has been received and entered.
2. Claims 1-20 have been cancelled.
3. Claims 21-26 are currently pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,906,573.

Applicant's claims are drawn to a culture medium that contains a nutrient broth, a pH indicator dye, and two buffers each having a different pKa. The buffers are specified as a phosphate salt and an acetate salt.

Art Unit: 1651

US '573 teaches a culture medium that contains a nutrient medium and an acetate buffer and a phosphate buffer (see column 1, lines 43-58). The culture media contains less phosphate buffer than it does acetate buffer. It contains 3.0 grams of acetate buffer (listed as potassium acetate) and 0.4 grams of phosphate buffer (listed as KH_2PO_4 and K_2HPO_4) (see Table 1, "BMB" formulation). US '573 does not teach adding a pH indicator dye to the culture medium. However, the medium of US '573 is designed to detect the growth of microorganisms. It is well known in the art to use pH indicator dyes, such as Bromocresol Purple, to detect when microorganism growth has occurred. Therefore, an artisan of ordinary skill would have understood that it would be beneficial to add an indicator dye, such as Bromocresol Purple, to the media of US '573 in order to detect when microorganism growth has occurred. Thus, a person of ordinary skill in the art would have been motivated to modify the culture medium of US '573 by adding a pH indicator dye.

US '573 also does not specifically teach using sodium acetate as the source of the acetate salt buffer. However, sodium acetate was known in the art at the time of the invention to function as a buffer. Therefore, it is considered an obvious modification of the media taught by US '573 to substitute sodium acetate for the potassium acetate taught in the reference.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following US Patents were cited in the parent application, US Pat. Appl. Number 09/699,728: US Pat. Nos. 4,291,122, 4,743,537, 4,914,034, 5,073,488, 5,552,320, 5,601,998, 5,866,356, and 5,968,807.

Art Unit: 1651


6. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SDC
May 15, 2002



LEON B. LANFORD, JR.
PRIMARY EXAMINER